

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**DANIEL E. BURG AND KRIS A.
BURG**

RESPONDENTS,

**v.
MARSHA C. DAMPIER AND
SABRINA GRAHAM**

APPELLANTS.

DOCKET NUMBER WD73186

DATE: July 26, 2011

Appeal From:

Boone County Circuit Court
The Honorable Mary (Jodie) Capshaw Asel, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Garrett S. Taylor, Columbia, MO, for respondents.

Thomas M. Schneider, Columbia, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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**DANIEL E. BURG AND KRIS A.
BURG,**

RESPONDENTS,

**v.
MARSHA C. DAMPIER AND
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No. WD73186

Boone County

Before Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Marsha Dampier and Sabrina Graham appeal from the trial court's judgment addressing a 50-foot wide perpetual, non-exclusive, roadway and utility easement granted over property they owned and/or occupied in favor of property owned by Daniel and Kris Burg. The easement in favor of the property owned by the Burgs had been expressed in their general warranty deed, and specified the precise dimensions and locations of the easement. The express grant of the easement also prohibited the placement of any cross-fencing, gates or obstructions of any kind on the easement area by the servient tenement.

The judgment ordered Dampier and Graham to remove all obstacles and encroachments from the easement, awarded the Burgs \$5,000 in damages for nuisance created by Dampier and Graham, invalidated a recorded trespass notice filed of record by Dampier and Graham, and enjoined Appellants from engaging in future conduct which impairs or obstructs the Burgs' use, enjoyment, and maintenance of the easement.

Affirmed.

Division Two holds:

(1) Appellants' request that this matter be remanded to the trial court to rewrite the express grant of easement to limit it to the dimensions of a 9-1/2 foot gravel driveway placed on the easement by the Burgs was not preserved for appellate review. Moreover, such relief is not appropriate where an express grant of an easement describes the easement's precise dimensions and metes and bounds location.

(2) Generally, where an easement is non-exclusive, the owners of the servient tenement may use the easement as long as that use does not substantially interfere with the dominate tenement's reasonable use of the easement.

(3) In determining whether a servient tenement's use of a non-exclusive easement substantially interferes with the dominant tenement, the trial court must consider and enforce any restrictions on the servient tenement owner's use expressed in a written grant of easement. It is only when an easement is silent regarding restrictions on its use that a trial court must resort to determining whether the servient tenement's use is reasonable.

(4) Trial court's entry of injunctive relief on Burgs' claim for private nuisance ordering Dampier and Graham to refrain from conduct threatening, harassing, annoying, or burdening the Burgs' maintenance, use, and enjoyment of the easement was not too vague or overbroad to be enforceable, and did not constitute an abuse of the trial court's discretion.

(5) If the injury for a private nuisance is permanent, the measure of general damages is the diminution in the market value of the land before and after the nuisance arose. If the injury from a private nuisance is temporary, the measure of general damages is the depreciation in the rental value or usable value of the property during the continuance of injury.

(6) Actual general damages need not be shown to permit a finding of private nuisance, as a court is free to award nominal damages.

(7) Whether a private nuisance is permanent or temporary, and whether actual general damages are incurred, an aggrieved party may recover special damages proximately caused by the nuisance. Special damages can include damages for inconvenience.

(8) The private nuisance caused by Dampier and Graham was temporary in nature.

(9) Trial court's award of \$5,000.00 in damages to the Burgs for private nuisance was supported by substantial and competent evidence as award could have been for general damages in light of evidence that usable value of the Burgs' property was reduced to zero by the recordation of a trespass notice which had the effect of land locking their property until declared invalid by the trial court. In the alternative, the damage award could have been a combination of an award of nominal damages along with special damages for the inconvenience caused the Burgs.

(10) Evidence supported entry of judgment for private nuisance against Dampier and Graham, jointly and severally.

Opinion by Cynthia L. Martin, Judge

July 26, 2011

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